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## INTERNATIONAL HUMANITARIAN LAW BETWEEN WAR AND PEACE

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**ABSTRACT**

This study dealt with the issue of the difficulties of applying international humanitarian law, because of its importance in light of international and non-international armed conflicts, in terms of alleviating the pain and suffering of the victims of international and non-international armed conflicts. Material and personal law in accordance with the provisions of the four Geneva Conventions of 1949 and the two Additional Protocols of 1977, and the difficulties facing the mechanisms of material application on both the national and international sides, and since the judicial mechanisms are important in holding the violators of international humanitarian law accountable, the study meant to talk about the national judicial mechanisms and the difficulties they face, and the judicial mechanisms The international humanitarian law and the difficulties it faces, which negatively affect the exercise of its tasks entrusted to it, and the study concluded several results, the most important of which are: The rules of international humanitarian law are mandatory for all countries, and the study concluded with several recommendations, the most important of which are: All countries must work to integrate the texts and provisions of international humanitarian law into their internal laws To ensure its proper application without difficulties.

**INTRODUCTION**

International humanitarian law aims to protect persons and civilian objects during the outbreak of armed conflict, mitigate the scourge of war and limit its effects, and protect those who are no longer fighting in the conflict, such as prisoners of war, the wounded, and the sick. Several international agreements have been issued that codify what has been established by binding international custom in force in times of armed conflict. Among the most prominent of these agreements are the four Geneva Conventions concluded on August 12, 1949 with its two additional protocols concluded in 1977, and the Convention for the Protection of Cultural Property of 1954 and others. The need to spread the rules of international humanitarian law and to take the necessary legislative and

administrative measures to implement international humanitarian law at the national level.

Humanity has taken a giant step by criminalizing violations of international humanitarian law stipulated in the Geneva Conventions and their protocols and others, as it listed four categories of international crimes as stipulated in Article Five of the Statute of the International Criminal Court, which was adopted in Rome on July 17, 1998, and these groups are represented in War crimes, crimes against humanity, genocide, ethnic cleansing, and the crime of aggression, which are crimes that are subject to the criminal jurisdiction of the International Criminal Court, and it does not exempt from being subject to them the push to obey the orders of commanders and

presidents or the enjoyment of diplomatic immunities and privileges for the perpetrators, as the perpetrators will be tried even if they are heads of state or ministers. Article 28 of Rome Statute) It is also not subject to statute of limitations, as it can be prosecuted no matter how long it takes.

However, the jurisdiction of the International Criminal Court is complementary in the sense that it is convened in the event of failure to prosecute these crimes before the national judiciary, or in the case of a sham trial, or in the event of the collapse of the entire national judicial system.

The effectiveness of international humanitarian law depends on the extent to which its rules are actually applied without difficulties in application, especially since in international and non-international armed conflicts, human lives are at risk, and if it is not applied effectively, human losses increase, which generates suffering and pain that is difficult to rectify or compensate for. .

Through this study, the difficulties of applying international humanitarian law will be addressed by talking about the national and international mechanisms available for the implementation of international humanitarian law and

showing the shortcomings in the four Geneva Conventions, which were unable to bridge the gaps after more than seventy years of their convening, which leads to skepticism and demand to reconsider The provisions of the agreements, especially with the succession of events and what we are witnessing today in many countries facing armed conflicts.

### **First: The Study Problem**

The problem of the study lies in the difficulties facing the application of international humanitarian law, especially in light of the armed conflicts the world is witnessing today, and the urgent need to apply international humanitarian law in an effective and real manner on the ground.

### **Second: Study Objectives:**

1. Statement of the extent of the binding force of international humanitarian law in international and non-international armed conflicts.
2. Statement of the mechanism of application of international humanitarian law in international and non-international armed conflicts.
3. Demonstrating the effectiveness of international humanitarian law conventions and documents in terms of their application in conflicts

International and non-international armed forces.

4. Statement of the difficulties facing the application of international humanitarian law.

### **Third: The Importance of the Study**

The importance of the study lies in examining the difficulties facing the application of international humanitarian law on the ground in light of the gross violations of human dignity that the world is witnessing today, and the resulting suffering and pain for the victims in international and non-international armed conflicts.

### **THE FIRST TOPIC: THE CONCEPT OF INTERNATIONAL HUMANITARIAN LAW**

Despite humanity reaching, after a bitter struggle, the principle of prohibiting force or the threat of its use in international relations in accordance with Article 4/2 of the United Nations Charter established in 1945 AD, and despite humanity's tremendous success in reaching the four Geneva Conventions of 1949 and its 1977 Protocols. Which worked to confirm the prohibition of war and work to alleviate its pain and limit its effects to the narrowest possible range, but all this did not prevent the outbreak of wars and the outbreak of

conflicts, but wars have increased recently after the end of the cold war between the Western camp and the traditional eastern camp in many places around the world and with The increase in international and internal wars, and the emergence of many separatist regions that try to separate from the motherland by declaring rebellion and taking up arms, as is the case in the Balkan countries, and the countries of the former Soviet Union, and the ongoing wars in Iraq, Afghanistan, Lebanon, and Palestine, and other disputes that confirm the urgent need for international humanitarian law and respect The Geneva Conventions, whose application took a new turn after the signing of the Rome Statute on July 17, 1998, establishing the International Criminal Court, which It became specialized in punishing violations of international humanitarian law, which have become international crimes.

In this topic, we will show the definition of international humanitarian law through the first requirement, while the second requirement we will allocate to the characteristics of international humanitarian law, and the third requirement we will allocate to the sources of international humanitarian law.

## The first requirement

### Definition of international humanitarian law

The jurist, the former president of the International Committee of the Red Cross, is considered the first to officially adopt the term international humanitarian law, and that was during the diplomatic conference held in Geneva during the years 1974-1977 related to the affirmation and development of international humanitarian law applicable in armed conflicts (1) and Professor Jean Pictet defines international humanitarian law as "That huge section of public international law that inspires human feeling and focuses on protecting the human individual in the event of war (1).

Professor Stanislav A. We note that it is "a set of rules of international law that aims in situations of armed conflict to protect people who suffer from the scourge of this conflict, and within a broader framework, to protect objects that are not directly related to hostilities (2).

Dr. Jaafar Abd al-Salam defines it in Arabic jurisprudence as "a set of rules and principles that place restrictions on the use of force in times of armed conflict, in order to:

1. Reducing the effects of violence and war on combatants beyond the necessary amount required by military necessities. Dr. Muhammad Al-Majzoub says that it is "that important part of public international law that is inspired by human feelings and aims to protect people in times of war and armed conflicts".

Dr. Amer Al-Zamali affirms that international humanitarian law is "the one whose customary and written rules aim to protect the affected persons in the event of an armed conflict and the consequences thereof, and also aim to protect funds that are not directly related to military operations." (3)

The publications of the International Committee of the Red Cross, which supervises respect for the 1949 Geneva Conventions and their 1977 Protocols, to which it is credited for concluding, have clarified that "the international set of rules derived from international conventions or international custom in particular to solve humanitarian problems arising directly from international and non-international armed conflicts, Which restricts, for humanitarian reasons, the right of parties to conflicts to use the methods and methods of warfare that please them or to protect the objects and persons who have

been affected or may be affected by the conflicts (4).

It can be concluded that international humanitarian law, or as it is sometimes called the law of armed conflict, aims to mitigate the scourge of war by protecting combatants who have become unable to continue fighting (such as the wounded, sick, and prisoners of war) and persons who do not originally participate in the fighting, as well as protecting civilian objects and cultural property.

2. To spare persons who do not directly participate in hostilities (5).

And the doctor knows him. Mahmoud Sharif Bassiouni defines it as "a set of norms that provide protection for certain categories of individuals and property that forbids any attacks they may be exposed to during armed conflicts, whether these conflicts are of an international or non-international character, and these norms are derived from international convention law or customary international law (6) .

Dr. Tawfiq Bouashba defines it as "a set of written and customary international legal rules that aim, in the case of any type of armed conflict, to protect people who do not participate in the fighting and to alleviate the pain of the victims, regardless of their type, as well as to protect property

and, in general, objects that are not directly related to operations or operations." military actions (7).

### **The second requirement**

#### **Characteristics of international humanitarian law**

From the previous definitions of international humanitarian law, we glean several characteristics that are unique to it and distinguish it from other branches of international law, as follows:

First: International humanitarian law is a law that applies during armed conflicts

This characteristic of international humanitarian law is evident in the names that are given to it, as it has been said that it is the law of war as it has been called the law of armed conflicts. To point out that the state of war may begin with the declaration of war by virtue of an official declaration, or begin with the outbreak of battles and the start of military operations and end with the end of the battles and the final cessation of military operations, especially with the conclusion of a peace treaty or conciliation (8), and therefore the temporary cessation of war, whether due to the agreed armistice between the two parties to the conflict, or because of the rearrangement of the forces or their mobilization and equipment does not mean

the end of the war, just as the continuation of aggression and occupation would maintain the right of legitimate resistance that has the right to defend its people and liberate its lands until the occupation is defeated.

The armed conflict in which the application of international humanitarian law erupts is every conflict between warring armed forces that are arguing to fight to obtain the rights they claim and the interests they protect, which are inconsistent with the rights and interests of the other party, whether the conflict is international, i.e. erupting between two or several states, or an internal conflict. It broke out between two sects or several sects within a single state (9).

And the effectiveness of international humanitarian law comes into actual application when a conflict erupts in the previous description, and therefore this law is invoked and demanded to be respected as long as the conflict persists, and as long as military operations continue to occur between the two parties even if they occur in an intersecting manner, so the operations of armed resistance to the occupation are subject to international humanitarian law Even if they were carried out at relatively distant intervals, even if there were no operations for a long time,

as long as the state of war remained and there was occupation (10).

During the conflict, combatants enjoy the protection of international humanitarian law, regardless of their affiliation with any party, that is, whether they belong to the aggressor party or to the aggressor party, as this law aims to mitigate the scourge of war and limit its effects on both parties, by prohibiting the use of certain weapons or by restricting its use.

Also, combatants who have given up their weapons or become unable to fight, such as the wounded, sick, and prisoners, enjoy the protection of international humanitarian law, provided that the combatants must be legitimately affiliated with one of the warring sects, and therefore do not have the status of combatant and outside the framework of international humanitarian law, spies or mercenaries who fight For money and do not belong to one of the parties to the conflict in any way, whether it is nationality or permanent residence.

Non-combatants (women, elderly, children, journalists, media personnel, medical personnel, ambulances, etc.) enjoy the protection of international humanitarian law, so they may not be targeted in fighting or their gatherings bombed (11).

Second: International humanitarian law is one of the sections of general international law and enjoys the same binding force:

You mentioned that international humanitarian law is one of the oldest branches of public international law, although its name appeared only recently, as its rules were codified in the form of international agreements long ago, but it is a branch that deals with one aspect of international law, which is the aspect of war.

Therefore, international humanitarian law and general international law are linked to the relationship of the branch to the origin, and this relationship has several effects, including:

1. If a war-related issue arises, its solution is subject to international humanitarian law, pursuant to the specific rule that restricts the general and limits the scope of its application, and therefore international humanitarian law alone applies to the issue (12).

2. That general international law is the general law of international humanitarian law, in the sense that its rules fill in any deficiency in it, that is, if there is no provision for the issue in the rules of international humanitarian law, whether conventional or customary, then the rules

of general law are applicable at that time (13).

1. The mechanisms for the implementation of public international law, whether at the international or domestic level, can be used when implementing and applying international humanitarian law, and therefore the United Nations and its executive organs such as the Security Council can be sought to enforce respect for international humanitarian law, and for this reason the Security Council has been resorted to on many occasions to form International criminal courts on many occasions to form international criminal courts to punish those responsible for committing international criminal crimes for the former Yugoslavia established in 1993 based on a decision issued by the Security Council, and the same was achieved when the International Criminal Tribunal for Rwanda was established in 1994, as well as the mechanism for referring the trial for international crimes. The case in Darfur before the International Criminal Court is based on a decision issued by the Security Council, as the Republic of Sudan is not a member of the Court and did not include or ratify its Statute.

2. That the rules of international humanitarian law have a binding force, as



they are like other legal rules that have a binding force, and states must commit to applying and respecting them, otherwise they will be exposed to international responsibility and the consequent compensation. Rather, the international responsibility resulting from violating the rules of international humanitarian law, It has become a special provision, as the violator of these rules is considered to have committed international crimes, and is subject to trial before the International Criminal Court, whose statute was signed on July 17, 1998 and entered into force on July 1, 2002, and which has the right to impose criminal penalties that may reach life imprisonment. (14), and it is not permissible to defend it by enjoying immunities or official ranks and titles, as leaders, officials and heads of state are subject to punishment before it (15) and violations of international humanitarian law constitute international crimes that do not fall under the statute of limitations, i.

Third: Violating the rules of international law will result in criminal penalties:

The rules of international humanitarian law are characterized by the fact that violating them entails the imposition of penalties such as imprisonment and imprisonment, in addition to the state's assumption of international responsibility

and the resulting compensation, in contrast to the violation of other rules of international law, which entails bearing international civil responsibility only and paying compensation without imposing a criminal penalty.

Therefore, humanity's accession to the Rome Statute establishing the International Criminal Court in 1998 is an important step towards conferring a criminal character on the rules of international humanitarian law, especially in light of the authorization of that court to try four classes of international crimes, namely war crimes, genocide and ethnic cleansing, Crimes against humanity and the crime of aggression, and the sects of these crimes are united by a common factor, which is that they all include in their criminal behavior and material element a violation of the rules of international humanitarian law.

It should also be noted that the International Criminal Court is a permanent court, meaning that it has a permanent court registrar and a fixed public prosecutor, and it is composed of elected judges, and cases are referred to it directly by the court's public prosecutor or by virtue of a decision of the Security Council, where he can refer the accused. Directly and requesting their arrest from

the Pre-Trial Chamber of the court, but before the establishment of the International Criminal Court, special courts were formed according to a decision of the Security Council, then they dissolve and the court dissolves as soon as the decision on the case before it ends, as its jurisdiction ends, (16) but the jurisdiction of the International Criminal Court has jurisdiction Complementary, in the sense that it convenes if the national judiciary of the states does not conduct the trial on their behalf, as it is the owner of the original jurisdiction to prosecute, but if this judiciary appears to be fictitious, or its inability and inability to prosecute, then the complementary or reserve jurisdiction is convened for the international tribunal.

It should be noted that the International Criminal Court is threatened by a huge challenge and it is feared that it will be infected with diseases of the United Nations and the UN Security Council, the most important of which is following the policy of double standards and politicizing its activity, as many decisions are issued for political motives, not for justice, and this is supported by the fact that there are recently thirteen cases before the court for accused All of them are from the continent of Africa, which prompted African leaders at the African Union Summit held in Sirte, Libya, in June 2009, to take a decision not

to cooperate with the International Criminal Court (17).

### **The third requirement**

### **Sources of international humanitarian law**

International humanitarian law is a branch of public law, and accordingly its sources are the same as the sources of general international law. original, derivative, or auxiliary, and this was also adopted by the International Criminal Court in Article (21) of the Statute of the Court, but it did not take into account custom as a source of international humanitarian law, as the Statute was satisfied with taking according to the internationally recognized rule that there is no crime There is no punishment except by text). However, this does not mean that there is no international custom in international humanitarian law, as it has an important role in the development of international humanitarian law. What is meant by the sources of law are: “the source from which the rule regulating the conduct of states emerges, which acquired the status of obligation until it became a legal rule.” In view of the sources of international humanitarian law, it is considered as follows:

#### ***First: the original sources***

1. International treaties

What is meant by international treaties as defined by the Vienna Convention on the Law of Treaties

1969 as "the international agreement concluded between states and international organizations in a written form and which is regulated by international law, whether it is included in one document or two related documents or more and whatever the special designation." (18)

International treaties relating to international humanitarian law include the following:

- Hague Conventions of 1907

The Second Hague Peace Conference was held, in the presence of representatives of (44) countries. This conference resulted in several international documents, the most important of which are the Third Agreement on the Initiation of a State of War, the Fourth Agreement on the Laws and Customs of Land War and its annexes, and the Fifth Agreement on the Rights and Duties of Neutrals in Land Wars .

The fourth agreement, which came in nine articles, and the regulations related to the laws and customs of land war, which came in (56) articles, is the most important document ever in light of the conference that was held at the time, and which is still valid to this day, and it was thanks to the

Russian diplomat (De Martinez) In the formulation of the preamble to this Convention, and its inclusion of a condition known by its name (Martinez Clause), which affirms that the population and combatants remain under the protection and authority of the principles of international law as established by custom, the principles of humanity, and the dictates of public conscience, in the absence of any specific rule or specific prohibition, The International Court of Justice emphasized the importance of this condition.

- Geneva Protocol of 1925

The protocol banning the warlike use of asphyxiating, poisonous or other gases and bacteriological methods was signed in Geneva, Switzerland on June 17, 1925, and it was especially welcome after the use of chemical weapons with the First World War, which led to more than 100,000 victims and deaths, although It has a clear shortcoming as this protocol does not prohibit the development, production or stockpiling of chemical weapons, and many international organizations that have ratified the protocol

It retained its right to use prohibited weapons against countries that are not party to the protocol, but it is of great importance in international humanitarian

law and represents the real beginning of banning this type of weapon.

It should also be noted here about previous international efforts to ban the use of some types of weapons, such as the (Liber) Code of 1836, the St. Petersburg Declaration of 1868, and the Second Declaration annexed to the Hague Convention of 1899, related to the abolition of the deployment of poisonous gases.

- The four Geneva Conventions of 1949 and the two Additional Protocols of 1977

The four Geneva Conventions are located at the core of international humanitarian law, and they are the backbone of international humanitarian law. Each agreement came separately to stand up for the victims of war and provide them with protection during international and non-international armed conflicts.

1. The First Geneva Convention protects the wounded, soldiers, and sick in war on land and includes 64 articles.

2. The Second Geneva Convention protects the wounded, sick, and shipwrecked soldiers in time of war and includes 63 articles.

3. The Third Geneva Convention applies to prisoners of war and includes 143 articles.

4. The Fourth Geneva Convention provides protection for civilians and the Convention includes 159 articles. As for the two additional protocols to the four Geneva Conventions of 1977, the first protocol was specific to international armed conflicts, while the second protocol was specific to non-international armed conflicts. (19).

#### **THE SECOND TOPIC: INTERNATIONAL HUMANITARIAN LEGAL PRINCIPLES GOVERN AID BETWEEN WAR AND PEACE**

The principle of national sovereignty and the need for state approval of offers of humanitarian assistance and the entry of humanitarian organizations has had a significant impact on the emergence of the principles of humanitarian action, which are basic restrictions imposed on everyone who provides humanitarian assistance, and these principles have been affirmed by many international charters and resolutions.

The emphasis also came on these principles through the Statute of the International Committee of the Red Cross (20), and here it is necessary to identify these principles, which are the principle of humanity, the principle of neutrality, the principle of non-discrimination and three demands.

### **The first requirement**

#### **The principle of humanity**

The principle of humanity is considered the basic legal guarantee for the respect and protection of human rights and fundamental freedoms during the conduct of military operations. The importance of this principle is evident in obliging the conflicting parties to take it into account, and it is an international legal obligation even in the absence of international texts and agreements (21). And that the principle of humanity, as determined by the Statute of the Red Cross, means remedying human suffering and alleviating it in all circumstances, and aims to protect life and health and ensure respect for human beings.

It should be noted that the International Court of Justice, in its ruling issued in the case of military and paramilitary activities in Nicaragua, defines humanity as “alleviating the suffering of individuals, protecting their lives, preserving their health, and respecting the human person. Therefore, the principle of humanity is a legal and moral rule, and finally an institutional rule that links in terms of being a fundamental principle All elements of the International Movement of the Red Cross and Red Crescent, and the General Assembly of the United Nations has

affirmed the principle of humanity in many of its resolutions.

The principle of humanity requires that humanitarian assistance include goods and services necessary for the survival of the population, and that it be provided to civilians who are deprived of the basic necessities of life as a result of the conflict, and that the purpose of such assistance is to alleviate human suffering and protect life, health and human dignity, and therefore this principle is violated when the aim of the aid Humanitarian is the provision of direct or indirect support to one of the parties to the conflict.

Here we see that it is necessary for the principle of humanity in humanitarian work to be associated with meeting humanitarian needs first and without deviating from achieving other goals and according to the criterion of need. (22).

### **The second requirement**

#### **The principle of neutrality**

Initially, the term neutrality is applied to the position of countries that do not participate in an existing war or siding with any of the warring parties. As for neutrality in the field of providing humanitarian aid, it is based on distinguishing between activities related to the distribution of humanitarian aid, and

other forms of work that can be carried out by organizations working in The field of food and medical aid (23).

Therefore, the principle of neutrality requires, above all, a distinction between combatants and non-combatants (civilians), as only civilians have the right to receive humanitarian aid. Therefore, it is necessary for humanitarian organizations and those working with them to make every effort to distinguish between combatants and civilians. However, humanitarian aid remains legally protected even when combatants succeed. In mixing with civilians and benefiting from the aid that is provided, and in application of this principle, humanitarian organizations are prohibited from participating in hostilities and carrying out parallel activities in support of one of the warring parties or providing assistance. The provision of humanitarian assistance in any armed conflict must be based on respect for humanitarian principles, which require that such assistance be provided impartially to civilians according to one criterion, which is need and without discrimination between their origins or beliefs, so understanding neutrality as a condition for providing humanitarian assistance is not contributing directly Or indirectly in the military effort of any party to the conflict.

Emphasis on the principle of neutrality in humanitarian aid came in several resolutions of the General Assembly of the United Nations, including General Assembly Resolution No. 43/131/1988, which came to encourage taking any position regarding the existing conflict, as it stated, “The principles of impartiality must be above all considerations for all parties.” Those who provide humanitarian assistance, as stated in the guidelines attached to the United Nations General Assembly Resolution No

46/182/1991 states that humanitarian assistance must be provided in accordance with the principles of humanity, neutrality and integrity.” Neutrality was also mentioned in many texts issued by many organizations interested in the field of relief. The principle of neutrality was referred to in humanitarian principles during operations carried out in areas of armed conflict. issued by the United Nations Development Programme, as well as the Mohonk Standards for Humanitarian Assistance in Complex Emergencies as well as the principle of neutrality within the Guidelines on the Right to Humanitarian Assistance adopted by the San Remo Institute in 1993.

The question that arises here is whether humanitarian organizations must adhere to

absolute neutrality in order to gain and maintain the confidence of the parties? Does this impartiality oblige her to remain silent? Or should it negotiate with the parties to facilitate the process of reaching the victims so that neutrality does not turn into a negative idea and a concept of abstention? (24)

In order to answer these questions, we must clarify that neutrality does not mean silence, passivity, or fear of the parties when providing assistance. Therefore, neutrality has two parts that complement each other: Then the organizations working in the field of relief must refrain from taking any position on the causes of the conflict and from denouncing human rights violations and leave these issues to the international bodies and mechanisms concerned with human rights such as Amnesty International and the Human Rights Council. The second part: the neutrality that does not lead to the failure of humanitarian organizations to present initiatives or to negotiate with the parties to the conflict in order to facilitate the delivery of aid to the victims, but rather that some decide that adherence to complete neutrality in disputes that occur within the state often fails to restore peace and that has contributed to prolonging the suffering, as happened in Bosnia). for civilians.

### **The third requirement**

#### **principle of non-discrimination**

According to the principle of non-discrimination, humanitarian assistance must be provided without discrimination of any kind, such as discrimination due to race, color, sex, language, religion, political opinion, national or social origin, property, birth, age, disability or any other status.

The principle of non-discrimination does not mean that everyone should be treated alike, and this means that there are some justifications for that difference in treatment, especially when treating some individuals and treating them in a way that is less than the treatment of other individuals. United Nations General Assembly Resolutions No. 43/131/1988 and 45/100/1990, which referred to the necessity of providing humanitarian assistance without discrimination. As for the International Court of Justice, it has placed the principle of non-discrimination among its priorities, as it indicated that in order for assistance not to take the nature of reprehensible interference in the internal affairs of a country, the assistance must not only be in conformity with what the Red Cross practices have dedicated to alleviating human suffering and preserving life. Health and the guarantee of respect

for the human personality, but it must be granted without any discrimination to all who need it. With regard to international humanitarian law, the principle of non-discrimination was the focus of his attention, especially with regard to the four Geneva Conventions of 1949 and their Additional Protocols of 1977 (), where the first paragraph of Article 70 of the First Additional Protocol indicates that “relief work of a neutral, civilian character ... Which takes place without any unfair discrimination. And it states, in the second paragraph of Article 18 of the Second Additional Protocol, that relief work is carried out to help the civilian population... which takes place without unfair discrimination. It is worth noting that Article (2F1) of the Second Additional Protocol has clarified what is meant by unfair discrimination, where It showed that unfair discrimination is that discrimination based on custom, color, gender, language, religion, creed, political or other opinions, national or social affiliation, wealth, birth or any other status, or on any other criteria. Non-discrimination is closely related to the principle of integrity, as all documents that define the principle of integrity refer it directly to the principle of non-discrimination, but there is a difference in meaning between the two principles, as the explanation of the protocol deals with The

first addition to the Geneva Conventions is the difference between non-discrimination and integrity, as the principle of non-discrimination is related to the real purpose of assistance, i.e. related to people who suffer, while the concept of integrity is related to the person in charge of the work, whether it is an individual or an institution, and what he must carry of the moral characteristics concerned, in other words, the principle of non-discrimination eliminates the objective differences between the individuals receiving assistance, while the principle of integrity eliminates the subjective differences, so assistance is provided according to the suffering of the persons, with priority given to the most urgent cases ().

## **CONCLUSION, RESULTS AND RECOMMENDATIONS**

### **First: the conclusion**

The study concluded with a statement of the difficulties of applying international humanitarian law, despite the international efforts that sought to alleviate the suffering and pain of the victims of armed conflicts, as those efforts ended with the conclusion of the four Geneva Conventions of 1949 and their annexes of 1977, as they are similar to the Hague Convention, which was concerned with consideration With the declared wars, the Geneva conventions and



the two additional protocols came to be considered in light of international and non-international armed conflicts, whether declared or undeclared. However, there are difficulties facing the application of international humanitarian law, represented in the difficulties of national implementation mechanisms through: State delay in joining and ratifying Conventions and the difficulty of integrating international obligations into national legislation, and the difficulties in international implementation mechanisms in several axes through the United Nations were represented in the failure of the United Nations Charter to keep pace with the developments of modern armed conflicts and the duplication of decisions of the United Nations organs and the control of the superpowers over the Security Council, in addition to the difficulties facing implementation International humanitarian law through the protecting power and non-governmental organizations Committee of the Red Cross - and the International Commission for the Inquiry of Right Despite the efforts of states to impose commitment and respect for international humanitarian law, and to hold violators of the law accountable, through the establishment of courts by the UN Security Council, such as the two courts (Nuremburg and Tokyo), which had

an effective role in establishing individual criminal responsibility for violators of the law, whether they were members of the armed forces or senior officers or heads of state without taking into account the international immunities of the offender's status), however, those courts were not characterized by fairness and justice, which led to much impunity, and is considered a violation of international legitimacy by the UN Security Council, which does not have the basis for a law to establish it. While the UN Security Council has the right to military interventions to stop violations of international humanitarian law and has the right to impose economic sanctions, political considerations dominate along the lines of humanitarian considerations.

In light of the national judicial mechanisms, the study found difficulties in applying them through the difficulty of harmonizing national legislation with the rules of international humanitarian law, because domestic legislation is not used to receiving such rules that are of a global nature.

Conflict of jurisdiction between states impedes the establishment of international criminal justice, as the claim of two states of their jurisdiction in one case, or the denial of each of them having jurisdiction

to consider the case may lead to prolongation of trial procedures, as well as allowing the accused to escape from punishment and the absence of coordination of state legislation in organizing deterrence. International crimes, such as cooperation in police investigations, exchange of information on criminals, and refusal to provide judicial assistance, especially with regard to terrorism crimes, in addition to sham national trials, where the political nature often prevails over the judicial one, and the lack of experience of the national judiciary in dealing with these cases.

And since the world's hope to reduce violations of international humanitarian law was represented by the establishment of the permanent International Criminal Court through the conclusion of the Rome Treaty of 1998, which entered into force in 2002, in which the Statute of the International Criminal Court was recognized and considered independent of the organs of the United Nations, but it also faces difficulties in holding the violators of international crimes accountable by considering it a court complementary to the national criminal judiciary and narrowing its substantive jurisdiction in defining international crimes and granting the powers of the Security Council to intervene in referring a

case for consideration or adjourning the case.

### **Second: the results**

1. The rules and provisions of international humanitarian law have developed significantly and significantly. After the law of war was limited to organizing combat war operations, and the Hague Convention was concerned with looking at declared wars, the four Geneva Conventions of 1949 and their appendices of 1977 came to look at international and non-international armed conflicts, declared and not declared.

2. International humanitarian law is obligatory for all states to respect it and abide by its provisions in light of the international custom it has gone through. It is based on three basic pillars represented in: The Hague Law, Geneva Law and customary law, whether the country is a party to the international conventions and treaties on the provisions of international humanitarian law or not. In it, they are obligated to respect and not violate international humanitarian law, especially with regard to internal disturbances and political tensions, so that states are obligated to apply and respect humanitarian rules.

3. The four Geneva Conventions of 1949 and their appendices of 1977 came in order to protect the victims of armed conflicts, civilians, prisoners of war and others who were targeted by the agreements. Accordingly, states that engage in international and non-international armed conflicts are prohibited from attacking groups protected under Geneva law (figuratively) and are prohibited from targeting civilians. In case of doubt about the capacity of a person, if he is a civilian or a military person, he shall be treated as a civilian until the contrary presumption appears. It is better to treat him according to the civilian presumption and not strip him of his capacity.

4. The material application of international humanitarian law is concerned with international and non-international armed conflicts. However, what the world is witnessing today in light of modern armed conflicts, and what the conflicts are witnessing in terms of developments in the means, methods and motives of fighting revealed the countries' lack of respect for the rules and provisions of international humanitarian law and the inadequacy of conventions Geneva and its protocols in the face of modern conflicts, especially those concerned with terrorism in the absence of an agreed definition of terrorism.

5. International humanitarian law came to include mechanisms and means of respecting it and applying its provisions through preventive and control mechanisms, and holding violators accountable through judicial (deterrent) mechanisms. However, there are difficulties that impede the application of international humanitarian law, whether through the state parties to the national system and judiciary) or through The international community, whether through the United Nations and its organs or international organizations and committees, and although international criminal law arose - in some of its aspects - under the aegis of international humanitarian law and ended up establishing the International Criminal Court, it also faces difficulties in exercising its jurisdiction and limiting violations International humanitarian law.

### **Third: Recommendations**

1. Some countries, especially Arab countries, should take all necessary measures and procedures to ensure respect and application of international humanitarian law, and review their national legislation related to international humanitarian law - such as military laws, to facilitate the integration of the provisions and rules of international

humanitarian law into national law, and impose severe penalties on violators, and adopt the principle of The universal jurisdiction of international humanitarian law in its national courts and the emphasis on the impartiality and effectiveness of courts in the pursuit of justice.

2. Amending the Geneva Conventions and the two additional protocols in line with the modern armed conflicts the world is witnessing, not adopting the formal division of armed conflicts between - international and non-international, amending texts related to the protection of civilians and defining them clearly and comprehensively for the purpose of protecting them in light of armed conflicts, and including more sanctions Effective and strict against every country that violates the rules and provisions of international humanitarian law, and that the investigation of violations becomes an imposed matter and does not depend on the state's approval, and stipulates the mechanism of the International Criminal Court to become the internationally effective punitive mechanism for violators of the rules of international humanitarian law.

3. Reconsidering the Rome Statute under which the International Criminal Court was established, especially with regard to

substantive jurisdiction, as we are witnessing today developments in international crimes, and reconsidering the authority granted to the UN Security Council to refer the case or postpone it so that the International Criminal Court is completely independent In order to achieve the justice that much of the world aspires to, and to hold war criminals accountable without pressure or interference in the jurisdiction of the court, and to have the full mandate to investigate and hold violators of international humanitarian law accountable so that none of them escapes punishment, and to impose sanctions on countries that conclude an agreement to prevent the extradition of criminals contrary to what It is agreed upon in international cooperation in the investigation and accountability of criminals, and in reviewing the texts that impose financial penalties in reinforcement.

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#### REFERENCES

1. Amer, Salah El-Din (2006), The jurisdiction of the International Criminal Court to prosecute war criminals, International Humanitarian Law, Cairo: The International Committee of the Red Cross.
2. Pictet, Jean (1984), International Humanitarian Law - Its Development and Principles, Geneva.

3. Stanislav. Nahlik (1984), Brief Exposition of International Humanitarian Law, Cairo: International Review of the Red Cross.
4. Abdel Salam, Jaafar (2006), International Humanitarian Law in Islam, International Humanitarian Law, Cairo: The International Committee of the Red Cross.
5. Bassiouni, Mahmoud (2006), the customary framework of international humanitarian law (interventions, loopholes, and ambiguities) - International Humanitarian Law, Cairo: International Committee of the Red Cross.
6. Bouashaba, Tawfiq (2006), International Humanitarian Law and Criminal Justice "- Some Remarks in the Direction of Universal Jurisdiction", International Humanitarian Law, Cairo: International Committee of the Red Cross.
7. Al-Majzoub, Muhammad (2002), Public International Law, Beirut: Al-Halabi Human Rights Publications.
8. Al-Zamali, Amer (1997), An Introduction to Humanitarian Law, Tunisia: Publications of the Arab Institute for Human Rights and the International Committee of the Red Cross.
9. Efforts of the International Committee of the Red Cross in case of violation of international humanitarian law, article published in the International Review of the Red Cross, No. (728), April 1981.
10. Abdel-Salam, Jaafar (2006) - International Humanitarian Law in Islam - International Humanitarian Law, Cairo: International Committee of the Red Cross.
11. Al-Jundi, Ghassan (1995), Mercenaries and International Law, Egyptian Journal of International Law, No. (41), .
12. Abdel Rahman, Ismail (2006), Primary Foundations of International Humanitarian Law, Cairo: The International Committee of the Red Cross.
13. Abu Al-Wafa, Ahmed (2006), Categories covered by the protection of international humanitarian law, International Humanitarian Law, Cairo: International Committee of the Red Cross.
14. Omar, Hussein Hanafi (2006), Immunities of rulers and their trial for war crimes, aggression, genocide and crimes against humanity, Cairo: Arab Renaissance House.
15. Abdel Rahman, Ismail (2006), Initial Foundations of International Humanitarian Law, International Humanitarian Law, Cairo: Publications of the International Committee of the Red Cross.
16. Bassiouni, Mahmoud Sharif (2001), International Criminal Court, Judges Club, Egypt.
17. Omar, Hussein Hanafi (2006), Immunities of Rulers and Their Trials for War Crimes, Aggression, Genocide, and Crimes Against Humanity, Cairo: Arab Renaissance House.
18. Ghoneim Qannas Al-Mutairi, Mechanisms for Implementing International Humanitarian Law, Department of Public Law, Faculty of Law, Middle East University, 2009/2010.
19. Al-Fatlawi, Suhail, Rabi`, Emad, 2020 Encyclopaedia of International Law (International Humanitarian Law), Dar Al-Thaqafa for publication, Amman, 5th Edition.
20. Vienna Convention on the Law of Treaties 1969 Article 1, paragraph a.
21. Al-Duraidi, Hussein Ali, International Humanitarian Law.
22. Shuruq Tayseer Abdul-Ghani Abu Dabous, Difficulties in applying international humanitarian law, Faculty of Law, Middle East University, June, 2020, p. 16.
23. Article 2/A of the Statute of the International Committee of the Red Cross of 24 July 1998.
24. Jaafour Islam, The Principle of Humanity Applied to Armed Conflicts of an International Character, MA Thesis submitted to the Faculty of Law, University of Mouloud Mamari-Tizi-Ouzou, Algeria, 2009.